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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Eric Jonathan Bauer

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11/22/2005

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EXAMINER

ABELSON, RONALD B

ART UNIT

PAPER NUMBER

2666

DATE MAILED: 11/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/488,182

Applicant(s)

BAUER ET AL.

Examiner

Ronald Abelson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4,7 and 10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1,4,7 and 10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114 was filed in this application after a decision by the Board of Patent Appeals and Interferences, but before the filing of a Notice of Appeal to the Court of Appeals for the Federal Circuit or the commencement of a civil action. Since this application is eligible for continued examination under 37 CFR 1.114 and the fee set forth in 37 CFR 1.17(e) has been timely paid, the appeal has been withdrawn pursuant to 37 CFR 1.114 and prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 10/31/2005 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1, 4, 7, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cruickshank (US 6,389,005), in view of Yu (US 5,787,347) and Cummins (US 6,292,910).

Regarding claims 1, 4, and 10, Cruickshank teaches a method and apparatus for an overload control method for use in a multi-branch Internet Protocol (IP) based private exchange (PBX) system with a network environment having a primary network ((fig. 1 box 42) and at least one alternate network (fig. 1 box 40, 44).

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The system comprises maintaining a congestion indicator status associated with each path in the primary network, the congestion indicator status indicating whether the path is congested and based on congestion data from at least one device that participated in packet telephony communication (fig. 3b box 134, col. 2 lines 32-36).

The system comprises receiving a call set up request from a source terminal (fig. 3b box 122, col. 2 lines 19-27).

The system comprises determining if a primary path between the source terminal and destination terminal is congested using the congestion indicator status (fig. 3b box 136).

The system comprises routing the call using the at least one alternate network if the primary path between the source terminal and a destination terminal is congested (fig. 3b box 138).

Regarding claims 4 and 10, in addition to the limitations listed, setting a congestion indicator flag associated with the path if the congestion data indicates that a path associated with the packet telephony communication is congested (fig. 3b box 136 "Y").

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Regarding claim 10, in addition to the limitations listed, a memory and processor (fig. 1 box 14, col. 2 lines 32-34).

Regarding claim 7, collecting congestion data associated with a packet telephony communication (fig. 3b box 134) and reporting the congestion data to a centralized server that performs overload control, whereby the centralized server evaluated the congestion data to determine if a path associated with the packet telephony communication is congested (fig. 1 box 14, fig. 3b box 134, col. 2 lines 32-34).

Regarding the limitation determining if the packet telephony communication had a duration that exceeded a predefined threshold, Cruickshank teaches measuring parameters such as packet delay, number of dropped packets, and throughput. Therefore, a minimum duration is inherent in order to determine these characteristics.

Regarding claims 1, 4, 7, and 10, Cruickshank is silent on setting a timer that will cause the congestion indicator flag to automatically expire after a predefined

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period of time, wherein the timer expires after a period of time within which the congestion is expected to be alleviated.

Yu teaches setting a timer that will cause the congestion indicator flag to automatically expire after a predefined period of time (col. 6 lines 24-31).

Therefore it would have been obvious to one of ordinary skill in the art, to modify the system of Cruickshank by setting a timer once congestion is detected. This modification can be performed according to the teachings of Yu. The suggestion for the modification is the preferred system does not immediately have to be checked to determine if congestion still exists (Yu: col. 6 lines 24-31).

Although the combination teaches setting a timer that will cause the congestion indicator flag to automatically expire after a predefined period of time, the combination is silent on the timer expires after a period of time within which the congestion is expected to be alleviated.

Cummins teaches setting the timer to expire after a given situation is expected to be completed (col. 1 lines 19-22). The examiner corresponds the applicant's time

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within which the congestion is expected to be alleviated to the time in which the given situation is expected to be completed in the reference.

Therefore it would have been obvious to one of ordinary skill in the art, to modify the system of the combination of Cruickshank and Yu by setting the timer to expire after a period of time within which the congestion is expected to be alleviated. This modification can be performed in software. This modification would benefit the system by not wasting resources checking to see if the congestion is alleviated during the time period when congestion is not likely to have been alleviated.

Response to Arguments

5. Applicant's arguments with respect to claims 1, 4, 7, and 10 have been considered but are moot in view of the new ground(s) of rejection. The current office action is the result on an updated search performed by the examiner.

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Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ronald Abelson whose telephone number is (571) 272-3165. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Seema Rao can be reached on (571) 272-3174. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RA
Ronald Abelson
Examiner
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Ron Abelson